

Commission on Victims in the Courts

Friday, October 18, 2013

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 2/21/14

Present: Judge Ronald Reinstein, Chairperson; James Belanger, Michael Breeze, Judge Peter Cahill, Sydney Davis, Judge Timothy Dickerson-*telephonically*, Captain Larry Farnsworth, Judge Elizabeth Finn-*telephonically*, Kirstin Flores, Michael Lessler, Daniel Levey, Keli Luther-*telephonically*, James Markey, Pam Moreton, Elizabeth Ortiz, Karyn Rasile, Judge Sally Simmons, Dimple Smith, Judge Richard Weiss, Judge Joseph Welty, and Cindy Winn-*telephonically*.

Absent/Excused: Shelly Corzo Shaffer, Karen Duffy, Leslie James, Judge Evelyn Marez, and Doug Pilcher.

Presenters/Guests: Mr. Jerry Landau, AOC-*telephonically*, Cindy Trimble, AOC, and Aaron Nash, Maricopa County Clerk of Superior Court's Office.

Staff: Carol Mitchell, AOC, Kelly Gray, AOC

I. Regular Business

A. Welcome and Opening Remarks

The January 25, 2013 meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:04 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

B. Approval of May 2013 Meeting Minutes

The draft minutes from the May 17, 2013, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes from May 17, 2013 meeting.

- ***Motion was called by Ms. Karen Duffy to approve the May 17, 2013 meeting minutes. Ms. Kristin Flores seconded; motion passed unanimously.***

C. Identify 2014 Tentative Meeting Dates

The Chairperson reviewed the tentative 2014 meeting dates of this committee. The Commission on Victims in the Courts will tentatively meet on the following dates:

- *Friday, February 21, 2014*
- *Friday, June 20, 2014*
- *Friday, October 3, 2014*

Ms. Carol Mitchell will notify the committee if the dates present any conflicts with the Arizona Judicial Council's meeting dates.

II. Old Business

A. Legislative Update

A proposed change to Criminal Restitution Order (CRO) legislation was presented by Mr. Jerry Landau. The proposed change to the statute removes language related to absconding from probation or sentence under A.R.S. § 13-805. It would read as follows:

A.R.S. § 13-805(C):

"C. At the time the defendant completes the defendant's period of probation or the defendant's sentence ~~or the defendant absconds from probation or the defendant's sentence~~, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection b of this section."

Proponents believe the current language mandates CROs for monies owed to victims when a defendant absconds (failure to report, or escape-and-recapture during probation or serving a sentence) creates multiple CROs, thus compounding the number of orders and resources required from the courts to administer the CRO. They believe that the proposed change would streamline the process, allowing one-time calculations for monies owed to victims, fines and fees, interest, and collections costs.

Mr. Landau indicated that the AJC and AOC are currently neutral on the proposal at this time. The AJC deferred action in its October 2013 meeting in

order to give COVIC, and other groups, a chance to review the legislative changes and give recommendations. The AJC may discuss it again at the December 2013 meeting.

A concern was raised that the proposed legislation would in essence remove the mandatory provision to order a CRO and add an additional step for a victim to perform to receive restitution. It was pointed out that if a CRO was issued *only* at the end of probation or at the end of sentence, victims of a serious crime could be waiting many years for restitution. Further, a committee member suggested that issuing a CRO at the time of sentencing may be more effective to receiving earlier payments as the offender may have assets that could have a lien applied; waiting until after probation/sentence could allow the offender to transfer property, monies, etc. to another individual/out of the country before restitution payments could be made. The additional steps required in removing the mandatory provision by victims, in addition to barriers to receiving restitution, would significantly and negatively impact victims in the courts.

- ***Judge Richard Weiss presented a motion to make criminal restitution mandatory only at the time of sentencing. Seconded by Ms. Karyn Rasile.***

Further discussion about the proposed motion and legislation revealed that there were concerns about what victims may desire in relation to CROs. It was noted that some victims, particularly in Family Court cases, may not want a CRO issued.

It was suggested that the judge should have more discretion when deciding to issue a CRO. It was determined that a change should relate to A.R.S. § 13-805(B) and should revise the language from “may” order to “shall” order a CRO at the time of sentencing. However, the group did not amend the proposed revision to the language in A.R.S. § 13-805(C) related to absconder status, as the revision in section B would make this moot relative to victim restitution and any CRO based on the absconder status would only relate to fines, fees, etc..

- ***Judge Richard Weiss later amended the motion; motion to make criminal restitution mandatory only at the time of sentencing, unless otherwise requested by the victim. Motion passed by majority; 16 yay, 3 nay.***

13-805. Jurisdiction

A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.

B. At the time the defendant is ordered to pay restitution by the superior court, the court ~~may~~ **SHALL, UNLESS OTHERWISE REQUESTED BY THE VICTIM,** enter a criminal restitution order in favor of ~~each person~~ **A VICTIM** who is entitled to

restitution for the unpaid balance of any restitution order. A criminal restitution order does not affect any other monetary obligation imposed on the defendant pursuant to law.

C. At the time the defendant completes the defendant's period of probation or the defendant's sentence or the defendant absconds from probation or the defendant's sentence, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection b of this section.

D. The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.

E. A criminal restitution order may be recorded and is enforceable as any civil judgment, except that a criminal restitution order does not require renewal pursuant to section 12-1611 or 12-1612. Enforcement of a criminal restitution order by any person who is entitled to restitution or by the state includes the collection of interest that accrues at a rate of ten per cent per annum. A criminal restitution order does not expire until paid in full.

F. All monies paid pursuant to a criminal restitution order entered by the superior court shall be paid to the clerk of the superior court.

G. Monies received as a result of a criminal restitution order entered pursuant to this section shall be distributed in the following order of priority:

1. Restitution ordered that is reduced to a criminal restitution order.

2. Associated interest.

H. The interest accrued pursuant to subsection E of this section does not apply to fees imposed for collection of the court ordered payments.

I. A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

B. Strategic Agenda Presentation

Cindy Trimble, AOC audit officer, discussed the FY 2015-2019 Judicial Branch Strategic Agenda. She is working with Vice Chief Justice Scott Bales and the AJC Strategic Agenda Subcommittee on the plan, which is tentatively titled "Justice for All Arizona: Courts Serving Communities."

In early 2013, Ms. Trimble solicited ideas and suggestions from various AJC subcommittees. The next step was to synthesize the information into a well-rounded and thoughtful plan. In this meeting, Ms. Trimble presented a draft version that is still a work in process. Emerging themes focus on access to justice, evidence-based practices, improving processes, training and workforce development, and proactive communication with the public. Ms. Trimble presented the draft to AJC this month and a final version is set to go before AJC in December 2013 for implementation on July 1, 2014.

The current goals – Promoting Access to Justice; Protecting Children, Families, and Communities; Improving Court Processes to Better Serve the Public; Enhancing Professionalism and Efficiency within the Judicial System, and

Improving Communications and Community Participation – are serving as placeholders for main ideas; however some of the subtopics are still being developed.

Dialogue during this meeting focused on goal two of the agenda: Protecting Children, Families, and Communities. This goal is typically a mainstay of every strategic agenda; however Justice Bales' focus on the development of a Center for Evidence-Based Practices is being highlighted this year. The chairperson has been working with various groups and Justice Bales to develop this idea.

New to the Strategic Agenda is the topic of human trafficking. Human trafficking raises a variety of issues and challenges for state courts. The focus given to this issue in the Strategic Agenda will begin the process of identifying and obtaining a better understanding of the types of crimes and victims involved, which will better prepare the courts to handle such cases.

Regarding general topic of human trafficking and abuse, Karyn Rasile, Supervisor, Scottsdale Healthcare Forensic Nurse Examiners, has a presentation that she gives on this subject. The Chairperson requested that Ms. Rasile present at the next COVIC meeting in February 2014.

Additionally, the chairperson commented on goal four, Enhancing Professionalism and Efficiency within the Judicial System. COVIC member, Judge Joseph Welty, has been working with the Judicial Education department to further develop and improve new judge orientation and other educational materials. Improving web-based video and audio conference capabilities, as well as development of guidelines for the use of social media by employees was briefly discussed.

C. Victim ID Protection Rule Implementation Update

Judge Ronald Reinstein, and Mr. Aaron Nash, Special Counsel & Public Information Officer at Clerk of Superior Court, Maricopa County presented an update on the process of implementing approved rule petition R-12-2004 that took effect on September 1, 2013.

Several counties and entities have experienced changes and programming issues; however many issues have been resolved. Various counties are addressing the implementation in different ways based on how the clerks and prosecutorial agencies share information. It was suggested that judges continue to be involved in the decision-making and determine if sealing cases on a case-by-case basis would provide more flexibility.

Although some questions were submitted to AOC from a limited jurisdiction court regarding the impact of the rule, there was very little concern expressed by limited court members of COVIC as this was primarily written for cases that have documents posted online.

III. New Business

A. Juvenile Violation Hearings and Victims Rights

Ms. Dimple Smith from the Pima County Attorney's Office and COVIC member discussed the practice in juvenile courts/probation in Arizona on victim notification and rights at a Violation of Probation (VOP) detention hearing.

It was pointed out that victims who opted in to receive notice of hearing are not being sent written notice and victims were routinely excluded from providing input at VOP detention hearings. Ms. Smith believed that this may be an across the board issue, therefore brought it to this committee. Although no other counties had similar experiences, it was suggested that Ms. Smith may want to submit this topic to the Committee on Juvenile Courts. Judge Simmons will investigate to determine any appropriate next steps towards resolution.

B. Conditions of Release / LJC Judge Cheat Sheet

Ms. Kirstin Flores, Director of the Attorney General's Office of Victim Services, first updated the group on the Internal Audit findings discussed at COVIC's May 2013.

In the May 2013, Ms. Flores reviewed an audit finding of a county attorney's office where the court in that jurisdiction had a practice of sentencing misdemeanor cases during the initial appearance when the defendant has plead guilty. In these instances, the prosecutor was not present, so the County Attorney's office was never aware of the case to provide victims' rights. The audit found that this practice was in violation of some victims' rights laws. This prompted an informal statewide survey, and it was found that 8 of the 15 offices had similar procedures. Later, Ms. Flores contacted Mr. Paul Julien, Judicial Education Officer at the AOC to discuss judicial training related to this issue.

Ms. Flores indicated that Mr. Julien had sent the related judge orientation and training materials to the Attorney General's Office for appropriate updating. Ms. Flores is considering making a judicial tip sheet or "cheat sheet" document to assist judges when sentencing that will remind judges of a victim's rights. Ms. Flores will be working with Mr. Julien in the coming months to improve training materials regarding this issue. It was suggested that the materials should reflect the diversity of the Arizona courts, at all levels, including a distinction between rural and urban court procedures.

Ms. Flores also identified issues regarding law enforcement's access to release orders and modifications to those orders. Victim rights laws indicate that a copy of the release order and modifications are to be sent to the victim through either

the prosecutor's office or through the County Sheriff's office. Other law enforcement agencies need this information in the field to effectively police situations involving domestic violence and other violent crime where the suspected perpetrator has been released on bond/bail.

Previous discussions have occurred within Maricopa County between the court and the Sheriff's office regarding potential solutions. It was suggested that because this is a statewide issue, more work needs to be done with this topic. The limited jurisdiction courts have their own jail courts that produce release orders which are not available to law enforcement. Further, it was pointed out that A.R.S §13-3624 says that "The court, within twenty-four hours after a defendant is arrested for an act of domestic violence, shall register a certified copy of the release order with the sheriff's office of the county in which the order was issued. The court shall notify the sheriff's office of material changes in the release order, if the conditions of the release order are no longer in effect and when the charges are resolved." and most Arizona courts are not in compliance with this law.

Judge Elizabeth Finn suggested that a subcommittee of this group was necessary to address this issue for limited jurisdiction courts.

The chairperson agreed that this important issue should be investigated further by a subcommittee consisting of the following COVIC members:

Judge Elizabeth Finn, Chairperson
Ms. Kirstin Flores
Mr. Daniel Levey
Ms. Pam Morton
Mr. Larry Farnsworth
Mr. James Markey

Ms. Carol Mitchell will provide Judge Finn with the contact information for the rest of the group.

IV. Call to Public

A. Good of the Order/Call to the Public

The chairperson called to the public for commentary. Judge Ronald Reinstein indicated that in the next meeting of this group, he would like Ms. Karyn Raisle to present on strangulation and DV cases and how forensic examinations are done by sexual assault nurse examiners (SANE nurses). He would also like Ms. Kristin Flores to update the group on the progress of the tip sheet.

Mr. Dan Levey shared information about a fundraiser sponsored by the Parents of Murdered Children at the Brunswick Zone Glendale on January 25, 2014 and indicated there was a flyer available on the table.

Ms. Sydney Davis is performing at the Herberger Theater in the lunchtime theater. She invited the group to attend.

Ms. Kristin Flores indicated that the 2013/2014 Victim Rights Training schedule is available at www.azag.gov. Her office has revamped the training to make it more effective and comprehensive.

V. Adjourn

A. Motion to Adjourn:

- *Judge Richard Weiss presented a motion to adjourn at 12:05pm. Seconded by Judge Peter Cahill. Motion passed.*

B. Next Committee Meeting Date:

Friday, February 21, 2014
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 119 A/B
1501 W. Washington St., Phoenix, AZ 85007